

LITIGATION ROSTER

SALES AND USE TAX

NOVEMBER 2010

**Sales and Use Tax
November 2010**

NEW CASES

Case Name

Court/Case Number

LUCENT TECHNOLOGIES II

LASC No. BC448715

CLOSED CASES

Case Name

Court/Case Number

NONE

Please refer to the case roster for more detail regarding new and closed cases

SALES AND USE TAX

LITIGATION ROSTER

November 2010

ALAMEDA, CITY OF, et al. v. The California State Board of Equalization

San Francisco Superior Court Case No. CPF-09-509234

Filed –04/21/09

Plaintiff's Counsel

Charles Coleman

Holland & Knight, LP

BOE's Counsel

Kris Whitten

BOE Attorney

John Waid

Issue(s): Whether BOE's characterization of transactions where the property sold is shipped to California customers from points out of state and the retailer has a business operation in Alameda as being subject to use tax is valid.

Audit/Tax Period: 1995 - Present

Amount: Unspecified

Status: The parties have stipulated and filed a motion to assign the *City of Alameda v. BOE*, *City of Brisbane v. BOE*, and the *City of South San Francisco v. BOE* to a single judge for all purposes. Pre-trial conference date is April 20, 2011. Trial is continued to May 2-3, 2011.

ALHAMBRA, CITY OF, et al. v. California State Board of Equalization

Los Angeles Superior Court Case No. BS124978

Filed – 02/19/10

Plaintiff's Counsel

Richard R. Terzian, Mark J. Mulkerin

Burke, Williams & Sorensen, LLP

BOE's Counsel

Marta Smith

BOE Attorney

John Waid

Issue(s): Whether BOE's reallocation of local sales tax away from the Los Angeles county-wide pool and directly to the City of Pomona for the period 1994-2009 violates public policy, due process, the statute of limitations, and the consistent and uniform administration of the law as required by [Revenue and Taxation Code sections 7221](#) et seq.

Audit/Tax Period:

Amount: Unspecified

Status: At the hearing on April 8, 2010, the court granted petitioners' motions. The court ordered that BOE's administrative decision issued January 15, 2010 is stayed pending the judgment of the court, filing of a notice of appeal from the judgment, or until the expiration of the time for filing such notice of appeal, whichever occurs first.

The court consolidated the following cases for all purposes: *City of Palmdale v. BOE* (LASC Case No. BS124919), *City of Los Angeles v. BOE* (LASC Case No. BS124950), and *City of Alhambra v. BOE* (LASC Case No. BS124978). *City of Palmdale* is designated as the lead case.

On August 30, 2010, the court issued its order ruling that BOE properly interpreted Revenue and Taxation Code section 7209. Hearing on the merits of all remaining issues is scheduled for February 16, 2011.

ASPECT SOFTWARE, INC. v. State Board of Equalization

San Francisco Superior Court Case No. CGC 07-468134

Court of Appeal, First Appellate District No. A127004

Plaintiff's Counsel

James P. Kleier

ReedSmith LLP

Filed –10/12/07

BOE's Counsel

Joyce Hee

BOE Attorney

Jeffrey Graybill

Issue(s): Whether tax applies to plaintiff's charges for what it alleges were intangible software license fees, and whether the charges should be excluded from tax as sales made pursuant to technology transfer agreements ([Regulation 1502.](#))

Audit/Tax Period: 10/01/00-12/31/00Amount: \$804,778.84

Status: Trial court judgment in favor of BOE. Plaintiff filed an appeal on November 16, 2009. The case is currently being briefed in the Court of Appeal.

BRISBANE, CITY OF v. The California State Board of Equalization

San Francisco Superior Court Case No. CPF-09-509232

Plaintiff's Counsel

Charles Coleman

Holland & Knight, LP

Filed –04/21/09

BOE's Counsel

Kris Whitten

BOE Attorney

John Waid

Issue(s): Whether BOE's characterization of transactions where the property sold is shipped to California customers from points out of state and the retailer has a business operation in Brisbane as being subject to use tax is valid.

Audit/Tax Period: 2001 - PresentAmount: Unspecified

Status: The parties have stipulated and filed a motion to assign the *City of Alameda v. BOE*, *City of Brisbane v. BOE*, and the *City of South San Francisco v. BOE* to a single judge for all purposes. Pre-trial conference date is April 20, 2011. Trial is continued to May 2-3, 2011.

D.R. SYSTEMS, INC. v. State of California; State Board of Equalization

San Diego County Superior Court Case No. 37-2009-00094087

Plaintiff's Counsel

Scott Savary

Savary, APC

Filed –

BOE's Counsel

Leslie Branman Smith

BOE Attorney

Renee Carter

Issue(s): Did plaintiff file a timely Claim for Refund for self-help credits subsequently disallowed during an audit by the BOE's Sales & Use Tax Department?

Audit/Tax Period: 04/01/02 – 12/31/05Amount: \$283,410.00

Status: Plaintiff's First Amended Complaint was filed on January 19, 2010. At the hearing on May 28, 2010, BOE's Demurrer was sustained with ten days leave to amend. Plaintiff's Second Amended Complaint

was served on June 8, 2010. BOE's Answer to the Second Amended Complaint was filed on July 2, 2010. The parties are engaging in discovery. Trial call date is June 10, 2011.

DAIMLERCHRYSLER CORPORATION v. State Board of Equalization

San Francisco Superior Court Case No. CGC 07-459702

Filed – 01/18/07

BOE's Counsel

Kris Whitten

BOE Attorney

John Waid

Plaintiff's Counsel

Jon D. Universal

Universal Shannon & Wheeler LLP

Issue(s): Whether the plaintiff is owed a refund of use tax it refunded under [Civil Code section 1793.25](#) to customers who leased vehicles that had defects that could not be repaired after a reasonable number of attempts.

Audit/Tax Period: 10/01/01-01/10/05

Amount: \$2,000,000.00

Status: Case settled. Stipulation and Order re Settlement signed by all parties and submitted to the court for approval.

FILLMORE, CITY OF v. California State Board of Equalization

San Francisco Superior Court Case No. CPF-09-509234

Court of Appeal, Second Appellate District No. B219483

Filed – 05/26/09

BOE's Counsel

Stephen Lew

BOE Attorney

John Waid

Plaintiff's Counsel

Jeffrey S. Baird, Joseph A. Vinatieri

Bewley, Lasseben & Miller, LLP

Issue(s): Whether [Revenue & Taxation Code section 7056](#) requires that consultants contracting with cities regarding local sales tax allocation must be authorized by resolution to represent the city and must meet certain criteria, including that they may not also represent retailers.

Audit/Tax Period: None

Amount: Unspecified

Status: Judgment dismissing Fillmore's Petition for Writ of Mandate, and Intervenor's Petition and Complaint was entered August 13, 2009. Intervenor, City of Industry and City of Livermore, filed Notices of Appeal on October 1, 2009. Fillmore's Cross Appeal was filed on October 30, 2009, and dismissed on April 9, 2010, at Fillmore's request. The case is fully briefed. Oral argument continued to December 9, 2010.

HOFSTADTER, DAVID, et al. v. The State Board of Equalization

(Class Action Complaint for Constructive Trust, etc.)

Los Angeles Superior Court Case No. BC376547

Filed – 08/24/07

BOE's Counsel

Bonnie Holcomb

BOE Attorney

John Waid

Plaintiffs' Counsel

Mitch Kalcheim

Kalcheim/Salah

Issue(s): Whether Dell properly collected use tax from its customers measured by the amount of a mail-in rebate on the sales ([Revenue and Taxation Code 6011](#); [Regulation 1671](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: Status conference continued from October 22, 2010 to February 2, 2010.

HSBC RETAIL SERVICES, INC. v. State of California Board of Equalization

San Francisco Superior Court Case No. CGC 07-469572

Court of Appeal, First Appellate District No. A125995

Plaintiff's Counsel

Donald J. Querio, Erik Kemp

Severson & Werson

Filed – 11/28/07

BOE's Counsel

Anne Michelle Burr

BOE Attorney

Jeffrey Graybill

Issue(s): Plaintiff is a lender who purchased receivables from retailers, and the debts have gone bad. Plaintiff asserts that it is entitled to take a bad debt deduction ([Regulation 1642](#)).

Audit/Tax Period: 10/01/97-12/31/02

Amount: \$9,158,743.00

Status: On November 18, 2010, the Court of Appeal issued its unpublished opinion affirming the trial court's judgment in favor of BOE. The Court agreed with the BOE that plaintiff was not entitled to take a bad debt deduction arising from its credit card losses.

INTAGLIO CORPORATION v. State Board of Equalization

Sacramento Superior Court Case No. 05AS02558

Plaintiff's Counsel

R. Todd Luoma

Law Offices of Richard Todd Luoma

Filed – 06/13/05

BOE's Counsel

Steven J. Green

BOE Attorney

Jeffrey Graybill

Issue(s): Whether plaintiff can exempt from tax its charges for special printing aids ([Regulation 1541](#)).

Audit/Tax Period: 04/01/97-12/31/00

Amount: \$208,513.38

Status: Pending trial setting.

ISTRIN, JONATHAN v. Ralphs Grocery Company, California State Board of Equalization

(Class Action Complaint for Constructive Trust, etc.)

San Francisco Superior Court Case No. CPF-09-509234

Plaintiff's Counsel

Jordan L. Lurie, Joel E. Elkins

Weiss & Lurie

Filed – 03/20/09

BOE's Counsel

Elisa Wolfe-Donato

BOE Attorney

John Waid

Issue(s): Plaintiff contends that Ralphs improperly collected sales tax reimbursement on sales of hot coffee to go. Plaintiff seeks an injunction against Ralphs. Plaintiff also seeks an order that Ralphs institute a system to accurately track tax on sales of hot coffee to go and to make refund applications to BOE,

and an injunction ordering BOE to act on Ralphs' refund applications and to deposit moneys already collected with the court. BOE contends that the court lacks jurisdiction of this case because plaintiff lacks standing to bring a suit to adjudicate a sales tax dispute. Plaintiff may not use remedies not authorized by the Legislature.

Audit/Tax Period: None

Amount: Unspecified

Status: The court granted BOE's and Ralphs' Demurrers with 30 days leave to amend. Plaintiff's First Amended Complaint was filed on March 3, 2010. Stipulation for Stay pending the results in *Loeffler* was filed on June 2, 2010.

LOS ANGELES, CITY OF, et al. v. California State Board of Equalization

Los Angeles Superior Court Case No. BS124950

Filed – 02/16/10

BOE's Counsel

Marta Smith

BOE Attorney

John Waid

Plaintiff's Counsel

Carmen Trutanich, Pejmon Shemtoob

Office of the Los Angeles City Attorney

Issue(s): Whether BOE's reallocation of local sales tax away from the Los Angeles county-wide pool and directly to the City of Pomona for the period 1994-2009 violates public policy, due process, the statute of limitations, and the consistent and uniform administration of the law as required by [Revenue and Taxation Code sections 7221](#) et seq.

Audit/Tax Period:

Amount: Unspecified

Status: At the hearing on April 8, 2010, the court granted petitioners' motions. The court ordered that BOE's administrative decision issued January 15, 2010 is stayed pending the judgment of the court, filing of a notice of appeal from the judgment, or until the expiration of the time for filing such notice of appeal, whichever occurs first.

The court consolidated the following cases for all purposes: *City of Palmdale v. BOE* (LASC Case No. BS124919), *City of Los Angeles v. BOE* (LASC Case No. BS124950), and *City of Alhambra v. BOE* (LASC Case No. BS124978). *City of Palmdale* is designated as the lead case.

On August 30, 2010, the court issued its order ruling that BOE properly interpreted Revenue and Taxation Code section 7209. Hearing on the merits of all remaining issues is scheduled for February 16, 2011.

LUCENT TECHNOLOGIES, INC. I, et al. v. State Board of Equalization of the State of California

Los Angeles Superior Court Case No. BC402036

Filed – 11/14/08

BOE's Counsel

Ronald Ito

BOE Attorney

Jeffrey Graybill

Plaintiff's Counsel

Jeffrey G. Varga

Paul, Hastings, Janofsky & Walker LLP

Issue(s): (1) Does the sale of software qualify for technology transfer agreement treatment; (2) have the plaintiffs established that the engineering and support charges are related to sales of tangible personal

property; and (3) did plaintiffs use the prior agreement to calculate their tax liability for the subject quarter. (Revenue and Taxation Code sections [6012](#) and [6010.9](#); Regulations [1502](#) and [1507](#).)

Audit/Tax Period: 1/1/95 - 12/31/99

Amount: \$3,480,913.12

Status: Final status conference is continued to May 5, 2011, and the new trial date is May 11, 2011.

LUCENT TECHNOLOGIES, INC. II v. State Board of Equalization of the State of California

Los Angeles Superior Court Case No. BC448715

Filed – 11/02/2010

Plaintiff's Counsel

Jeffrey G. Varga, Julian Decyk
Paul, Hastings, Janofsky & Walker LLP

BOE's Counsel

Stephen Lew
BOE Attorney
Jeffrey Graybill

Issue(s): Does the sale of software qualify for technology transfer agreement treatment. (Revenue and Taxation Code sections [6012](#) and [6010.9](#); Regulations [1502](#) and [1507](#).)

Audit/Tax Period: 2/1/96 – 9/30/00

Amount: \$276,832,998.67

Status: BOE's responsive pleading is due December 24, 2010. Case Management Conference is set for March 2, 2010.

McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.

Cross Complaint: Albertson's Inc, et al. v. The California State Board of Equalization

Los Angeles Superior Court Case No. BC325272

Filed – 02/24/06

Plaintiffs' Counsel

Philip J. Eskanazi, Lee A. Cirsch
Akin, Gump, Strauss, Haur & Feld LLP

BOE's Counsel

Bonnie Holcomb
BOE Attorney
John Waid

Issue(s): Whether sales tax reimbursement was illegally being collected on the sale of glucose test strips and skin puncture lancets which were exempt from sales tax ([Regulation 1591.1](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial court ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending. At the status conference on November 4, 2010, the court set the date of March 18, 2011 for hearing on defendant Walgreens' motion for summary judgment. The stay is lifted as to Walgreens only. Plaintiff is allowed to conduct whatever discovery plaintiff deems necessary to oppose the motion with respect to Walgreens. The stay remains in place for all other defendants. Further Status conference is scheduled for March 18, 2011.

McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.
Cross-Complaint: CVS, Inc. v. California State Board of Equalization
Los Angeles Superior Court Case No. BC325272

Plaintiffs' Counsel
Richard T. Williams
Holland & Knight LLP

Filed – 01/24/06
BOE's Counsel
Bonnie Holcomb
BOE Attorney
John Waid

Issue(s): Whether sales tax reimbursement was illegally being collected on the sale of glucose test strips and skin puncture lancets which were exempt from sales tax ([Regulation 1591.1](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial court ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending. At the status conference on November 4, 2010, the court set the date of March 18, 2011 for hearing on defendant Walgreens' motion for summary judgment. The stay is lifted as to Walgreens only. Plaintiff is allowed to conduct whatever discovery plaintiff deems necessary to oppose the motion with respect to Walgreens. The stay remains in place for all other defendants. Further Status conference is scheduled for March 18, 2011.

McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.
Cross-Complaint: Longs Drug Stores Corporation, et al. v. California State Board of Equalization
Los Angeles Superior Court Case No. BC325272

Plaintiffs' Counsel
Douglas A. Winthrop, Christopher Kao
Howard, Rice, Nemerovski, Canady, Falk & Rabkin

Filed – 01/24/06
BOE's Counsel
Bonnie Holcomb
BOE Attorney
John Waid

Issue(s): Whether sales tax reimbursement was illegally being collected on the sale of glucose test strips and skin puncture lancets which were exempt from sales tax ([Regulation 1591.1](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial court ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending. At the status conference on November 4, 2010, the court set the date of March 18, 2011 for hearing on defendant Walgreens' motion for summary judgment. The stay is lifted as to Walgreens only. Plaintiff is allowed to conduct whatever discovery plaintiff deems necessary to oppose the motion with respect to Walgreens. The stay remains in place for all other defendants. Further Status conference is scheduled for March 18, 2011.

McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.
Cross-Complaint: Rite Aid v. The California State Board of Equalization
Los Angeles Superior Court Case No. BC325272

Plaintiffs' Counsel
Douglas C. Rawles
ReedSmith LLP

Filed – 01/24/06
BOE's Counsel
Bonnie Holcomb
BOE Attorney
John Waid

Issue(s): Whether sales tax reimbursement was illegally being collected on the sale of glucose test strips and skin puncture lancets which were exempt from sales tax ([Regulation 1591.1](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial court ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending. At the status conference on November 4, 2010, the court set the date of March 18, 2011 for hearing on defendant Walgreens' motion for summary judgment. The stay is lifted as to Walgreens only. Plaintiff is allowed to conduct whatever discovery plaintiff deems necessary to oppose the motion with respect to Walgreens. The stay remains in place for all other defendants. Further Status conference is scheduled for March 18, 2011.

McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.
Cross-Complaint: Wal-Mart Stores, Inc. v. The California State Board of Equalization
Los Angeles Superior Court Case No. BC325272

Plaintiffs' Counsel
Gail E. Lees, Brian Walters
Gibson, Dunn & Crutcher LLP

Filed – 02/24/06
BOE's Counsel
Bonnie Holcomb
BOE Attorney
John Waid

Issue(s): Whether sales tax reimbursement was illegally being collected on the sale of glucose test strips and skin puncture lancets which were exempt from sales tax ([Regulation 1591.1](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial court ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending. At the status conference on November 4, 2010, the court set the date of March 18, 2011 for hearing on defendant Walgreens' motion for summary judgment. The stay is lifted as to Walgreens only. Plaintiff is allowed to conduct whatever discovery plaintiff deems necessary to oppose the motion with respect to Walgreens. The stay remains in place for all other defendants. Further Status conference is scheduled for March 18, 2011.

McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.
Cross-Complaint: Walgreen Co. v. The California State Board of Equalization
Los Angeles Superior Court Case No. BC325272

Plaintiffs' Counsel
Douglas C. Rawles
ReedSmith LLP

Filed – 02/24/06
BOE's Counsel
Bonnie Holcomb
BOE Attorney
John Waid

Issue(s): Whether sales tax reimbursement was illegally being collected on the sale of glucose test strips and skin puncture lancets which were exempt from sales tax ([Regulation 1591.1](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial court ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending. At the status conference on November 4, 2010, the court set the date of March 18, 2011 for hearing on defendant Walgreens' motion for summary judgment. The stay is lifted as to Walgreens only. Plaintiff is allowed to conduct whatever discovery plaintiff deems necessary to oppose the motion with respect to Walgreens. The stay remains in place for all other defendants. Further Status conference is scheduled for March 18, 2011.

MERCEDES-BENZ USA, LLC v. California State Board of Equalization
San Francisco Superior Court Case No. CGC 08-471310

Plaintiff's Counsel
Jon D. Universal
Universal, Shannon & Wheeler

Filed – 01/23/08
BOE's Counsel
Kris Whitten
BOE Attorney
John Waid

Issue(s): Whether the BOE has the authority to reimburse Mercedes Benz for payments it made to lessees of its cars as part of restitution payments made under the California Lemon Law that constituted returns of use tax payments the customers made on the leases.

Audit/Tax Period: None

Amount: \$2,500,000.00

Status: Case settled. Stipulation and Order re Settlement signed by all parties and submitted to the court for approval.

MOHAN, DIANE, et al. v. Dell, Inc., et al.
San Francisco Superior Court Case No. CGC 03-419192

Plaintiffs' Counsel
Jason Bergmann
Paul, Hastings, Janofsky & Walker, LLP

Filed – 11/01/04
BOE's Counsel
Anne Michelle Burr
BOE Attorney
John Waid

Issue(s): Whether Dell illegally collected use tax measured by the price of optional service contracts even though the contracts were not separately stated on the invoice ([Revenue and Taxation Code 6011](#); [Regulations 1546](#) and [1655](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: The trial court ruled that the service contracts were in fact optional and that the Dell entities should not have collected tax on their sales. Dell took up a writ of mandate on this issue to the First District Court of Appeal. In a published decision, the appeals court agreed with the trial judge. (*Dell, Inc. v. Sup. Ct.* (2008) 159 Cal.App.4th 911.) Plaintiffs' Unfair Competition Law claims are still pending.

With the aid of the trial court judge, the parties have tentatively agreed to the broad outlines of a settlement regarding payment of claims. Numerous details still remain to be worked out, mostly regarding the technical aspects of notice and supporting documentation. Settlement conference continued to January 21, 2011.

NORTEL NETWORKS INC. I v. State Board of Equalization of the State of California

Los Angeles Superior Court Case No. BC341568

Filed – 10/17/05

Court of Appeal, Second Appellate District No. B213415

BOE's Counsel

Plaintiff's Counsel

Stephen Lew

Jeffrey Varga, Julian Decyk

BOE Attorney

Paul, Hastings, Janofsky & Walker LLP

Mike Llewellyn

Issue(s): 1) Whether [Regulation 1507](#) is valid, 2) whether the software sold by Nortel is prewritten, and 3) whether the software sales agreements technology transferred agreements.

Audit/Tax Period: 01/01/94-12/31/97 (audit); 01/01/96-06/30/01 (refund) Amount: \$36,520,136.70

Status: Judgment in favor of plaintiff was entered August 29, 2008. BOE's appeal was filed on January 8, 2009. Nortel's cross-appeal was filed January 13, 2009. The case has been fully briefed in the Court of Appeal. The case was argued and submitted on October 21, 2010.

NORTEL NETWORKS INC. II v. State Board of Equalization of the State of California

Los Angeles Superior Court Case No. BC375660

Filed – 08/09/07

Plaintiff's Counsel

BOE's Counsel

Jeffrey G. Varga

Lew/Wolfe-Donato

Paul, Hastings, Janofsky & Walker LLP

BOE Attorney

Mike Llewellyn

Issue(s): Whether the engineering services rendered by Nortel were part of the sale of tangible personal property under [Revenue and Taxation Code sections 6011\(c\)\(10\) and 6012\(c\)\(10\)](#).

Audit/Tax Period: 01/01/94-12/31/97

Amount: \$1,054,020.00

Status: The case went to trial on the first cause of action, which included claims relating to charges by Nortel for systems application engineering and equipment application engineering charges. The remaining causes of action for different charges were bifurcated and stayed, pending the results of the judgment in the Nortel I case. Nortel prevailed on its claims at trial, and the court has entered a statement of decision on such claims. With the remaining claims stayed, the case will remain in this status until it either settles or until resolution of the Nortel I appeal.

PALMDALE, CITY OF, et al. v. State of California, Board of Equalization

Los Angeles Superior Court Case No. BS124919

Filed – 02/16/10

BOE's Counsel

Marta Smith

BOE Attorney

John Waid

Plaintiff's Counsel

Mitchell E. Abbott, Veronica S. Gunderson

Richards, Watson & Gershon

Issue(s): Whether BOE's reallocation of local sales tax away from the Los Angeles county-wide pool and directly to the City of Pomona for the period 1994-2009 violates public policy, due process, the statute of limitations, and the consistent and uniform administration of the law as required by [Revenue and Taxation Code sections 7221](#) et seq.

Audit/Tax Period:

Amount: Unspecified

Status: At the hearing on April 8, 2010, the court granted petitioners' motions. The court ordered that BOE's administrative decision issued January 15, 2010 is stayed pending the judgment of the court, filing of a notice of appeal from the judgment, or until the expiration of the time for filing such notice of appeal, whichever occurs first.

The court consolidated the following cases for all purposes: *City of Palmdale v. BOE* (LASC Case No. BS124919), *City of Los Angeles v. BOE* (LASC Case No. BS124950), and *City of Alhambra v. BOE* (LASC Case No. BS124978). *City of Palmdale* is designated as the lead case.

On August 30, 2010, the court issued its order ruling that BOE properly interpreted Revenue and Taxation Code section 7209. Hearing on the merits of all remaining issues is scheduled for February 16, 2011.

SONOMURA, AKIRA v. State Board of Equalization

San Diego Superior Court Case No. 37-2007-00074759-CU-MC-CTL

Filed – 05/30/08

BOE's Counsel

Leslie Smith

BOE Attorney

John Waid

Plaintiff's Counsel

Bob Mullen

Attorney at Law

Issue(s): (1) Whether BOE's issuance of a Notice of Determination pursuant to [Revenue and Taxation Code section 6829](#) was proper; and (2) whether BOE's Notice of Determination was timely ([Revenue and Taxation Code section 6487](#)).

Audit/Tax Period: 04/01/1993 – 03/31/1996 (dual 04/25/2002)

Amount: \$79,000.00

Status: BOE's Answer was filed July 8, 2008. BOE is conducting discovery.

SOUTH SAN FRANCISCO, CITY OF v. California State Board of Equalization, et al.

San Francisco Superior Court Case No. CPF-09-509231

Filed – 02/20/09

Plaintiff's Counsel

Peter S. Hayes

Meyers, Nave, Roback, Silver & Wilson

BOE's Counsel

Kris Whitten

BOE Attorney

John Waid

Issue(s): Whether BOE's characterization of transactions where the property sold is shipped to California customers from points out of state and the retailer has a business operation in South San Francisco as being subject to use tax is valid.

Audit/Tax Period: 1996 - PresentAmount: Unspecified

Status: The parties have stipulated and filed a motion to assign the *City of Alameda v. BOE*, *City of Brisbane v. BOE*, and the *City of South San Francisco v. BOE* to a single judge for all purposes. BOE's Answer to plaintiff's First Amended Complaint was filed on March 23, 2010. Pre-trial conference date is April 20, 2011. Trial is continued to May 2-3, 2011.

TESTOUT CORPORATION v. State Board of Equalization

Los Angeles Superior Court Case No. BC442139

Filed – 07/22/2010

Plaintiff's Counsel

Jonathan G. Fetterly

Holme Roberts & Owen LLP

BOE's Counsel

Elisa Wolfe

BOE Attorney

Wendy Vierra

Issue(s): Is plaintiff, an out-of-state retailer, entitled to a refund of use taxes it collected on sales it made to its California customers and submitted to the BOE during the period it held a use tax registration with the Board? (Sales and Use Tax Regulation [1684\(c\)](#).)

Audit/Tax Period: 1/1/03 – 12/31/05Amount: \$105,602.00

Status: Pursuant to stipulation, BOE's response to the Complaint is due February 22, 2011.

UNIVERSAL CITY STUDIOS LLLP v. State Board of Equalization of the State of California

San Francisco Superior Court Case No. CGC-10-498151

Filed – 03/26/10

Plaintiff's Counsel

Jeffrey M. Vesely, Richard E. Nielsen

Pillsbury Winthrop Shaw Pittman LLP

BOE's Counsel

David Lew

BOE Attorney

Jeffrey Graybill

Issue(s): Whether plaintiff self reported the proper amount of taxable sales related to its lump sum charges for access to its theme park attractions and meals and beverages ([Sales and Use Tax Regulation 1603](#).)

Audit/Tax Period: 7/1/96 - 4/30/02Amount: \$461,282.12

Status: BOE's Answer was filed May 17, 2010. Mandatory Settlement Conference is set for March 4, 2011. Trial is set to begin on March 21, 2011.

WOOSLEY, CHARLES PATRICK v. State Board of Equalization

Los Angeles Superior Court Case No. CA000499
Court of Appeal, Second Appellate District: B113661
Plaintiff's Counsel
James M. Gansinger
Gansinger, Hinshaw

Filed – 06/20/78
BOE's Counsel
Diane Spencer-Shaw
BOE Attorney
Sharon Brady Silva

Issue(s): Whether the taxpayer is entitled to a refund of the vehicle license fee ([Revenue and Taxation Code sections 10753 and 10758](#)) and use tax imposed.

Audit/Tax Period: None

Amount: \$1,492.00

Status: On July 21, 2010, the California Supreme Court denied Woosley's Petition for Review. As no further appeals may be taken from the appellate decision, the case will be remanded to the trial court to make further determinations in accordance with the appellate court's decision. Remittitur issued August 3, 2010. Further Status Conference set for January 31, 2011.

**SALES & USE TAX
CLOSED CASES
LITIGATION ROSTER
November 2010**

No cases were closed during this period.

DISCLAIMER

Every attempt has been made to ensure the information contained herein is valid and accurate at the time of publication. However, the tax laws are complex and subject to change. If there is a conflict between the law and the information found, decisions will be made based on the law.

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